

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Apr 10, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual  
and enrolled member of the Confederated  
Tribes of the Colville Reservation; and  
DONALD R. MICHEL, an individual and  
enrolled member of the Confederated  
Tribes of the Colville Reservation, and  
THE CONFEDERATED TRIBES OF  
THE COLVILLE RESERVATION,  
Plaintiffs,  
*and*  
THE STATE OF WASHINGTON,  
Plaintiff-Intervenor,  
v.  
TECK COMINCO METALS, LTD., a  
Canadian corporation,  
Defendant.

No. 2:04-CV-00256-SAB

**ORDER DENYING MOTION  
FOR RECONSIDERATION**

Before the Court is Plaintiff Confederated Tribes of the Colville  
Reservation's Motion for Reconsideration or in the Alternative for Immediate  
Review Pursuant to 28 U.S.C. § 1292, ECF No. 2838.

**ORDER DENYING MOTION FOR RECONSIDERATION # 1**

1 Plaintiff Confederated Tribes of the Colville Reservation (CCT) requests  
2 that the Court reconsider its Order Granting Defendant's Motion for Partial  
3 Summary Judgment on Cultural Resource Damages, ECF No. 2831, or certify the  
4 controlling issues of law for appeal to the Ninth Circuit Court of Appeals pursuant  
5 to 28 U.S.C. § 1292(b).

6 CCT argues that CCT had not previously asserted any claims for "cultural  
7 resource damages" under the Comprehensive Environmental Response,  
8 Compensation, and Liability Act (CERCLA) and Teck's motion encouraged this  
9 error by conflating resource injury and resulting service loss by labelling them both  
10 "cultural." CCT states that this framing misconstrued CCT's natural resource  
11 damage claim and distracted this Court from the regulatory framework and  
12 supporting authority. Upon review, and being fully informed, this Court disagrees  
13 and denies the motion and certifies the controlling issues of law for appeal  
14 pursuant to 28 U.S.C. § 1292(b).

15 Reconsideration is an extraordinary remedy, to be used sparingly in the  
16 interests of finality and conservation of judicial resources." *Kona Enterprises, Inc.*  
17 *v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion for  
18 reconsideration may be reviewed under either Federal Rule of Civil Procedure  
19 59(e) (motion to alter or amend a judgment) or 60(b) (relief from judgment). *Sch.*  
20 *Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). "A district court  
21 may properly reconsider its decision if it '(1) is presented with newly discovered  
22 evidence, (2) committed clear error or the initial decision was manifestly unjust, or  
23 (3) if there is an intervening change in controlling law.'" *Smith v. Clark Cnty. Sch.*  
24 *Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *Sch. Dist. No. 1J*, 5 F.3d at 1263).  
25 "There may also be other, highly unusual, circumstances warranting  
26 reconsideration." *Sch. Dist. No. 1J*, 5 F.3d at 1263. Whether to grant a motion for  
27 reconsideration is within the sound discretion of the court. *Navajo Nation v.*  
28

1 *Confederated Tribes and Bands of the Yakima Nation*, 331 F.3d 1041, 1046 (9th  
2 Cir. 2003).

3 Plaintiff did not meet the standard for reconsideration outlined in case law.  
4 No new evidence was discovered, nor did the Court commit clear error or make an  
5 initial determination that was manifestly unjust, and there was not an intervening  
6 change in controlling law. Whether termed cultural resource damages or lost  
7 services, this is not the type of loss contemplated by Congress when passing and  
8 amending CERCLA. Therefore, CCT's motion for reconsideration is denied and  
9 the Court certifies this issue for appeal pursuant to 28 U.S.C. § 1292(b)

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff Confederated Tribes of the Colville Reservation's Motion for  
12 Reconsideration or in the Alternative for Immediate Review Pursuant to 28 U.S.C.  
13 § 1292, ECF No. 2838, is **DENIED**.

14 2. The controlling issues of law related to service loss/cultural resource  
15 damages under CERCLA are certified for appeal pursuant to 28 U.S.C. § 1292(b).

16 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to file  
17 this Order and provide copies to counsel.

18 **DATED** this 10th day of April 2024.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

24 Stanley A. Bastian  
25 Chief United States District Judge  
26  
27  
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